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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,745	07/02/2003	Michael A. Stetson	STETS-002A	5533
7590	02/10/2005		EXAMINER	HUYNH, KHOA D
Kit M. Stetina, Esq. STETINA BRUNDA GARRED & BRUCKER Suite 250 75 Enterprise Aliso Viejo, CA 92656			ART UNIT	PAPER NUMBER
3751				
DATE MAILED: 02/10/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/612,745	STETSON, MICHAEL A.
	Examiner Khoa D. Huynh	Art Unit 3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 26 November 2004.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-18 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-3 and 7-18 is/are rejected.  
 7) Claim(s) 4-6 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 02 July 2003 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____ .  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/9/03</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____ .                                  |

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election without traverse of Group I with claims 1-18 in the reply filed on 11/26/04 is acknowledged.

***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the fluid level actuator activates the pump as recited in claim 4 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Objections***

3. Claim 15 is objected to because of the following informalities: the recitation "cubular" should be changed to --tubular--. Appropriate correction is suggested.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pace (2900079) in view of Takacs (3616468).

Regarding claim 1, the Pace reference discloses a skimmer system attached to a pool or tank having fluid therein. The fluid in the pool or tank defines a fluid surface (the schematic wavy line in Fig. 1). The system includes a reservoir (10) to receive fluid from the pool or tank; the level of the reservoir fluid is being maintainable below the level of tank fluid (the schematic wavy line in Fig. 1). The system also includes an inlet having an inlet edge (where element 17 located) and an inlet surface (about 13), the inlet is positioned adjacent to the pool or tank, the inlet is being located below the level of the tank fluid surface and declining away from the tank. The system also includes a reservoir pump (23), a filter (19,28) and a weir (17) having a weir edge.

The Pace reference DIFFERS in that the weir is not mounted in such a way that the particulate in the fluid pass under the weir as claimed. Attention, however, is directed to the Takacs reference which discloses another skimmer system for a pool or tank. The system includes a gate or weir (at 26) that is mounted in such a way that the weir edge is substantially below the water level to allow particulate to pass under the weir when the pump is activated and prevent particulate to pass under the weir when the pump is inactivated. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the Pace weir by mounting in the top side of the inlet in view of teaching of Takacs. Such modification would be considered a mere substitution of one functionally mounting configuration for a gate or weir within the pool skimmer system art that would work equally well on the Pace device. The Takacs reference also includes a check valve (57) attached to the reservoir for allowing overflow water from escaping through a drain (58).

6. Claims 2, 3, 7-10 and 12-17, are rejected under 35 U.S.C. 103(a) as being unpatentable over the modified Pace (as discussed supra) in view of Downs (6158064).

Regarding claim 2, the modified Pace reference DIFFERS in that it does not specifically include a level regulator as claimed. Attention, however, is directed to the Downs reference which discloses another skimmer system for a pool or tank. The system includes a reservoir for receiving fluid from the pool and a fluid level regulator (36) for maintaining the fluid level in the reservoir at a desired level. Therefore, it would have been obvious to one of ordinary skill in

the art at the time the invention was made to have modified the modified Pace reference by employing a fluid level regulator, in view of the teaching of Downs, in order to ensure that the skimmer well is always filled with water to protect the pump and other associated components.

Regarding claims 3 and 7, it would have been obvious to one of ordinary skill in the art to modify the modified Pace by adjusting the fluid transferred rate of the pump to be greater than or equal to the fluid transferred rate of the inlet. Such adjustment of the pump would be considered a mere choice of the fluid flow rate of the pump on the basis of its suitability for the intended use.

Regarding claim 8, the modified Pace reference also DIFFERS in that it does not specifically disclose that the inlet edge is about one inch below the level of the tank fluid surface as claimed. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ a depth dimension about one inch for the inlet edge since discovering an optimum value for such depth dimension involves only routine experiment or trial and error for one of skill in the art.

Regarding claim 9, the modified Pace reference also DIFFERS in that it does not specifically disclose that the inlet edge is about 24 inches wide and an inlet opening of about 4 inches high as claimed. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ a width of about 24 inches for the inlet edge and a height of about 4 inches

for the inlet opening since discovering an optimum value for such dimensions involves only routine experiment or trial and error for one of skill in the art.

Regarding claim 10, the modified Pace reference also DIFFERS in that it does not specifically disclose that the inlet surface has a decline of about 20 degrees as claimed. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ such a degree for an angled surface since discovering an optimum degree for such angle involves only routine experiment or trial and error for one of skill in the art.

Regarding claim 12, the modified Pace reference also DIFFERS in that it does not specifically disclose that the reservoir has a capacity of about 12 to 16 cubic feet as claimed. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ such capacity for the reservoir since discovering an optimum value for such capacity involves only routine experiment or trial and error for one of skill in the art.

Regarding claims 13 and 15, as schematically shown in Figure 1, the reservoir (10) has a cylindrical or tubular configuration.

Regarding claim 14, the modified Pace reference also DIFFERS in that it does not specifically disclose that the reservoir has a radius of thirty inches as claimed. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ such dimension for the radius of the reservoir since discovering an optimum value for such radius involves only routine experiment or trial and error for one of skill in the art.

Art Unit: 3751

Regarding claim 16, the modified Pace reference also DIFFERS in that it does not specifically disclose that the reservoir has a base dimension of thirty inches by thirty inches as claimed. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ such dimensions for the base of the reservoir since discovering an optimum value for such base dimension involves only routine experiment or trial and error for one of skill in the art.

Regarding claim 17, the modified Pace reference also DIFFERS in that it does not specifically disclose that the overflow valve is located one inch above the inlet edge as claimed. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ such mounting dimensions for the overflow valve since discovering an optimum value for such dimension involves only routine experiment or trial and error for one of skill in the art.

7. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over the modified Pace (as discussed supra) in view of Adam (3910840).

The modified Pace reference also discloses a flange or tray (at 18) located under the inlet, the tray having an aperture being sized and configured to receive and secure the filter (19). The modified Pace reference DIFFERS in that it does not specifically disclose that the flange is conical as claimed. Attention, however, is directed to the Adam reference which discloses another skimmer system for a pool or tank. The system includes a filter (at 16) secured to a tray having a

conical configuration. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the modified Pace reference by employing a conical tray for receiving and securing the filter in view of the teaching of Adam. Such modification would be considered a mere substitution of one functionally mounting tray configuration for another within the pool skimmer system art that would work equally well on the Pace device.

8. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over the modified Pace (as discussed supra) in view of Pace (2826307).

The modified Pace reference also DIFFERS in that it does not specifically include a cover with a hand engagable grip as claimed. Attention, however, is directed to the Pace ('307) reference which discloses another skimmer system for a pool or tank. The system includes a cover (Fig. 2) having a cap member with an expose surface with an appearance substantially matched with the surface of the pool or tank. The cap member also includes a hand engagable grip (Fig. 2). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the modified Pace reference by employing a cover including a cap member with a hand engagable grip, in view of the teaching of Pace ('307), so that the user can grip and lift the cover to gain access to the skimmer system conveniently.

9. The claimed subject matter of claims 4-6, including all of the limitations of the base claim and any intervening claims, are objected to since they are free of prior art.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa D. Huynh whose telephone number is (571) 272-4888. The examiner can normally be reached on M-F (7:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Khoa D. Huynh  
Patent Examiner  
Art Unit 3751

HK  
02/07/2005